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In re Application of:
SHARMA, Ravi, Ivan
U.S. Application No.: 10/528,164
PCT No.: PCT/US2004/024486
International Filing Date: 26 July 2004
Priority Date: 25 July 2003
Atty Docket No.: 741038.1001
For: INVERTED KEYBOARD
INSTRUMENT AND METHOD FOR
PLAYING THE SAME

DECISION ON PETITION TO
WITHDRAW HOLDING OF
ABANDONMENT (37 CFR 1.181)
AND PETITION FOR REVIVAL
(37 CFR 1.137(b))

This decision is issued in response to the "Petition To Withdraw Holding Of Abandonment Under 37 CFR 1.181" and the "Petition For Revival Of An International Application For Patent Designating The United States Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 20 November 2006. No petition fee is required for the petition under 37 CFR 1.181; applicant has not submitted the required petition fee for the petition under 37 CFR 1.137(b).

BACKGROUND

On 26 July 2004, applicant filed international application PCT/US2004/024486. The international application claimed a priority date of 26 July 2004, and it designated the United States. The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 25 January 2006.

On 15 March 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States. The Transmittal Letter does not indicate that it was accompanied by payment of the basic national fee, and the application file includes no record of payment of this fee. In addition, the submission did not include an express request to begin national examination procedures.

On 10 April 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to provide the full U.S. Basic National Fee by 30 months.

On 20 November 2006, the petitions considered herein were filed. The petition under 37 CFR 1.181 asserts that the papers filed to initiate this national stage application included a credit card payment of the required basic national fee (a copy of this form is included with the present

petition) and that the holding of abandonment is therefore improper. The petition for revival under 37 CFR 1.137(b) is provided as an alternative petition, should the petition under 37 CFR 1.181 be dismissed.

DISCUSSION

A. Petition To Withdraw Abandonment Under 37 CFR 1.181

Section 1893.01 of the MPEP states the following regarding commencement of the national stage in the United States (emphasis added):

Subject to 35 U.S.C. 371(f), commencement of the national stage occurs upon expiration of the applicable time limit under PCT Article 22(1) or (2), or under PCT Article 39(1)(a). See 35 U.S.C. 371(b) and 37 CFR 1.491(a). PCT Articles 22(1), 22(2), and 39(1)(a) provide for a time limit of not later than the expiration of 30 months from the priority date. Thus, **in the absence of an express request for early processing of an international application under 35 U.S.C. 371(f) and compliance with the conditions provided therein, the U.S. national stage will commence upon expiration of 30 months from the priority date of the international application.** Pursuant to 35 U.S.C. 371(f), the national stage may commence earlier than 30 months from the priority date, provided applicant makes an express request for early processing and has complied with the applicable requirements under 35 U.S.C. 371(c).

As noted above, applicant here filed a Transmittal Letter seeking entry into the U.S. national stage on 15 March 2005, prior to the national stage entry date of 25 January 2006; however, the filing did not include an express request to begin national examination early, nor did it include all the requirements for such early commencement of national examination (i.e., an executed declaration). Thus regardless of when the national stage papers were filed, the USPTO could not commence national stage processing of the present application until thirty months from the priority date, i.e., 25 January 2006.

The present petition asserts that applicant was prejudiced by the USPTO's failure to notify it of the lack of a filing fee prior to the expiration of the thirty-month deadline; however, based on the above, this argument is unconvincing. Applicant's failure to request early commencement of national examination and to file the materials required for such early examination precluded the USPTO from processing this application until the thirty-month deadline had expired.¹

¹ It is noted that, in recognition of problems of accuracy, memory and perception, 37 CFR § 1.2 states: "The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt." Thus, any confusion resulting from mis-communication between the applicant and the PCT Help Desk will not support granting of the requested relief.

By operation of law, an international application becomes abandoned with respect to the United States if payment of the basic national fee is not submitted prior to the expiration of the thirty-month deadline (see 35 U.S.C. 371(d) and 37 CFR 1.495(h)). Applicant's 15 March 2005 submission was the only filing herein prior to the expiration of the thirty-month deadline. Thus, for the present application to avoid becoming abandoned, the 15 March 2005 submission would have to have included payment of the basic national fee. A review of the application file does not indicate that the materials filed 15 March 2005 included payment of the basic national fee. Accordingly, by operation of law, the application became abandoned at midnight on 25 January 2006, and the subsequent mailing of Notification Of Abandonment on 10 April 2006 was therefore proper.

The present petition asserts that a credit card payment form authorizing a charge for the basic national fee was included with the materials filed 15 March 2005; a copy of the form is included with the present petition, as is a copy of a return postcard that itemizes the credit card form as part of the 15 March 2005 submission. However, the USPTO has no record of receiving or processing such a form, and applicant has failed to provide a copy of the return postcard bearing a USPTO receipt stamp (which would provide *prima facie* evidence that the credit card form was included with the materials filed 15 March 2005). It is noted that the Form PTO-1390 Transmittal Letter filed by applicant on 15 March 2005 does not indicate that a credit card form was included therewith.

Based on the above, applicant has not provided an adequate showing that payment of the basic national fee was submitted prior to the expiration of the thirty-month deadline. Accordingly, withdrawal of the abandonment under 37 CFR 1.181 is inappropriate on the present record.

B. Petition For Revival Under 37 CFR 1.137(b)

The present submission includes an alternative petition for revival of the international application under 37 CFR 1.137(b). However, applicant has not included payment of the \$750 small entity petition fee required for such a petition. Accordingly, the petition for revival has not been considered on the merits.

CONCLUSION

The petition to withdraw the holding of abandonment under 37 CFR 1.181 is **DISMISSED** without prejudice.

The alternative petition for revival under 37 CFR 1.137(b) has not been considered on the merits because the required petition fee was not included with the petition.

If reconsideration on the merits of the petition under 37 CFR 1.181 is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed To Withdraw Holding Of Abandonment" and must include an acceptable showing that applicant filed the basic national fee herein prior to the expiration of the thirty-month deadline on 25 January 2006.

If applicant seeks consideration on the merits of the petition under 37 CFR 1.137(b), payment of the appropriate petition fee must be submitted.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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